



**State-Tribal Relations Committee**  
**64th Montana Legislature**

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June 13, 2016

To: STRC Members

Fr: Hope Stockwell, Research Analyst

Re: ICWA case data in Yellowstone County

The STRC asked at its October 2015 and March 2016 meetings for specific data on Indian Child Welfare Act cases in Montana. DPHHS says it is unable to provide data on incidence of ICWA cases, the percent in which parent rights are terminated, or cases by tribal affiliation, because it does not currently track this data in this way.

Yellowstone County (YC) is tracking its ICWA cases manually. The data is attached to provide some perspective for the STRC. This memo summarizes that data.

Total Dependent/Neglect (DN) cases in YC in 2015 = 452

- This is a 386% increase since 2009.
- YC handled 22% of all DN cases in Montana in 2015.

Average age of all children removed in 2015 = 5.16 to 5.66 years

- 30% of all children are one year of age or younger.

ICWA cases in 2015 = 43.8% of removals

- ICWA cases in 2007 accounted for 27% of removals.
- American Indians and Alaska natives comprised 4.5% of YC's estimated population in July 2014, according to the U.S. Census Bureau.

Primary causes or significant contributors to removal of children:

- Drugs = 64.4% of all removals and 66.7% of ICWA cases
- Alcohol = 20.8% of all removals and 33.8% of Indian child cases
- Physical abuse or domestic abuse between care providers or parents = 52.9% of all removals
- Domestic violence = 32.3% of ICWA cases
- Physical abuse = 9.1% of Indian child cases

Removals from a home where one or more parents or care providers are incarcerated at the time of removal or as a result of the case:

- 42.4% of Indian child cases
- 40.9% of Non-Indian child cases

## **Yellowstone County Dependent/Neglect Case Summary, 2015**

(Provided by Yellowstone County Deputy Attorney Corbit Harrington)

### **Total Number of DN cases filed:**

As of December 31, 2015, the DN Division of the Yellowstone County Attorneys Office in conjunction with the AG's office had filed 452 DN cases. Those cases included some children who were removed, returned, and re-removed in 2015

DN cases filed in Yellowstone County in past years are as follows:

2009:	117 children
2010:	123 children
2011:	176 children
2012:	272 children
2013:	196 children
2014:	184 children
2015:	452 children

Out of a population of 152,000 people in this county, we have around 35,720 children. So, approximately 1.26% of children in Yellowstone County were removed in 2015.

### **Judicial Assignments:**

The 452 DN cases were assigned by the Department to the judges as follows:

#### **DN cases filed and assigned in 2015**

Moses:	121
Fagg:	102
Gustafson:	83
Souza:	75
Knisely:	70
Todd:	1
TOTAL:	452.

Judge Todd supervises Drug Court which draws parents from the other judges if the parents choose to participate in Drug Court and if they are

accepted into Drug Court. The one case assigned to Todd at removal involved a family that was already involved in Drug Court.

Judge Moses and Judge Fagg's cases accounted for 49.34% of the cases assigned in 2015 which was just six cases under the other four judges combined and five cases under the other three non-Drug Court judges.

As of December 31, 2015, all active DN cases including 2015 cases and all other DN cases that are active but filed in prior years had been assigned as follows:

**Active DN cases by assignment:**

Fagg:	135
Moses:	121
Knisely:	89
Souza:	72
Gustafson:	67
Todd:	31
TOTAL:	515

DPHHS decided to revert back to intake and ongoing divisions with two supervisors controlling approximately 15 social workers to handle intake and removals and three supervisors controlling approximately 15 social workers to handle ongoing case management. There is no mechanism for the Department, a party to these actions, to randomly assign judges to the cases. The mechanism the Department had used did not randomly assign judges to the cases, causing the disparities shown above. In 2016, the judges ordered the County Attorneys Office to randomly assign DN cases which are now assigned by a rotation.

The disparity between the number of DN cases actually filed (452) and the Full Court reported DN cases opened or reopened (512) reflects the difference between actual cases filed and cases that were "opened" and "reopened". The Full Court system allows judges and clerks to "close" DN cases even though those cases are not dismissed and remain active after the first permanency hearing. Cases can then be "reopened" by the clerk or judge to have additional hearings in the future.

### **Average Age of Children:**

At the time of removal, the average age of children removed was approximately 5.16 to 5.66 years old. This number is estimated because the age included in affidavits is usually rounded down to the nearest year.

135 children or 30.27% of the children removed in 2015 were one year of age or younger. This means almost 1/3 of the children removed were infants, and 32 infants were removed at birth, usually from drug-addicted or incarcerated mothers.

### **Indian Children:**

198 of the children removed in 2015 were Indian children accounting for 43.8% of the removals. For several years in a row, the number of ICWA children removed from neglectful and abusive homes has exceeded forty percent. The number of ICWA children whose parental rights have been terminated but who have not been adopted have generally exceeded 45% for many years. In 2007, the number of Indian children involved in removals was 27% which increased to 33.2% in 2012 to 44.3% in 2013.

### **Drugs:**

Drugs were stated as a primary cause or significant contribution to 291 removals or 64.38% of the removals. The most prevalent drug of choice is meth, but many cases involves opiates, pot, prescription drugs, benzos, spice or a combination of drugs. Drugs were the state primary cause or significant contribution to removal of 132 Indian children (66.66% of all ICWA cases). Drug use was a state primary cause of significant contribution to the removal of 159 non-Indian children (62.6%). Thus, there was about 4% difference between Indian and Non-Indian children removed because of their parents' drug use.

### **Alcohol:**

Alcohol was the primary cause or significant contribution to 94 removals or 20.8% of the removals. 67 of 94 cases involving alcohol as a

primary cause or significant contribution of the removal Indian children or 33.84% of Indian children compared to 27 of 254 Non-Indian cases (10.63%).

#### **Physical Abuse:**

Physical Abuse was a primary cause or significant contribution to the removal of 91 children or 20.13% of total DN cases. In addition, Domestic Abuse between care providers or parents accounted for 148 cases or 32.74% of all DN removals. Combined, these totals reflect physical violence being a primary cause or contributing factor in 239 cases of 452 removals (52.88%).

64 Indian children were removed from homes in which Domestic Violence was the reason or contributing factor to the removal (32.32% of ICWA cases) and Non-Indian children were removed because of domestic violence in 84 cases or 33.07% of Non-Indian cases.

18 Indian children were removed from homes in which physical abuse of the child was the reason or contributing factor to the removal (9.1%) and Non-Indian children were removed because of physical abuse in 73 cases or 28.74% of Non-Indian children.

#### **Incarceration:**

Incarceration of a parent or care provider which is defined as the parent or care provider either under probation or parole or physically incarcerated in jail or prison at the time of the child's removal or as a result of the facts giving rise to the removal was a factor in 188 of 452 cases (41.59%). 84 of 198 Indian children were removed from a home where one or more parents and care providers were incarcerated (42.42%) while 104 of 254 Non-Indian children were removed from a home where one or more parents and care providers were incarcerated (40.94%).

#### **Sex Abuse:**

Not all sex abuse cases were also classified as physical abuse although both were noted in some cases where the abuse was both sexual and additionally physically harmful. Sex abuse of children accounted for 32 removals or 7.08%. 11 of the 32 involved Indian children (5.55%) and 21 involved non-Indian children (8.27%).

### Child Neglect:

Child Neglect was a primary cause or significant contributing factor to removal of 442 of 452 children or 97.79%.

### Dismissals:

During 2015, the same year as the case was filed, 67 cases were dismissed by the judges which accounted for 15% of the total cases filed. Most were dismissed during a (3)(d) or "SS" disposition in which custody of the child is given to the "non-offending" parent.

### Increases in the number of Abuse and Neglect cases filed in the State:

Year	Number of cases filed (and reopened)	Difference
2009	1006	
2010	1030	24
2011	1208	178
2012	1494	286
2013	1527	33
2014	1609	82
2015	2321	712

### Counties contributing most to the increase in 2015:

Yellowstone	+289
Flathead	+56
Missoula	+53
Cascade	+43
Broadwater and LC	+31

### Number of Abuse and Neglect Cases filed (and reopened) by Judicial District:

Judicial District	Number of Cases
1	141
2	107

3	23
4	215
5	24
6	16
7	37
8	386
9	114
10	61
11	146
12	85
13	512
14	10
15	81
16	63
17	63
18	71
19	35
20	69
21	25
22	81